IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 159 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AASIF ABUBANKAR NEVIWALA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SP MAJMUDAR for Applicant(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 1,
MR BHAVIN J SATWARA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2007

ORAL JUDGMENT

Heard learned advocate Shri Majmudar for the petitioner, learned APP Shri Mengdey for the State and learned advocate Shri Satwara for respondent

No.2, original complainant.

2. In the present petition, the accused has challenged a condition contained in the order dated 16.1.2007 imposed by the Sessions Court requiring the petitioner to deposit the entire amount of fine of Rs.1,10,000/- for being enlarged on bail pending appeal.

3. While entertaining this petition, this Court had required the petitioner to deposit a sum of Rs.20,000/- which, the learned advocate Shri Majmudar states, has been done and the amount has also been withdrawn by respondent No.2.

4. For alleged dishonour of cheque for a sum of Rs.1,07,000/-, the petitioner was prosecuted and the learned Magistrate by judgment dated 27th December 2006 convicted him for offence punishable under section 138 of the Negotiable Instrument Act and sentenced him to imprisonment for a term of seven months as also imposed a fine of Rs.1,10,000/-. Aggrieved by the said judgment, the petitioner appealed before the Sessions Court. The appeal has been admitted and is pending. For suspending the sentence, the Sessions Court required the petitioner to deposit the entire amount of fine by his order dated 16.1.2007. The petitioner is, therefore, before this Court.

5. As noted earlier, the petitioner has already

deposited a sum of Rs.20,000/- which has been duly withdrawn by respondent No.2. The case of the petitioner is that in any case, the Magistrate could not have imposed fine in excess of Rs.5,000/- considering his pecuniary limitation contained in the provisions of the Criminal Procedure Code. He, therefore, submitted that the Sessions Court ought to have suspended the entire judgment.

6. Considering the fact that the appeal is admitted and the petitioner has also deposited a sum of Rs.20,000/- as per the directions of this Court, in the facts of the case, it is directed that the further implementation of the judgment and order dated 27th December 2006 shall remain stayed till final disposal of Appeal No.1/07 filed by the petitioner pending before the Sessions Court. The learned Judge may attempt to dispose of the appeal expeditiously and preferably within a period of four months from the date of receipt of a copy of this order. With these directions, the petition is disposed of. Rule is made absolute to the above extent.

Direct service is permitted.

(Akil Kureshi, J.)

(vjn)